IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7988 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GOVIND TAPU

Versus

UNION OF INDIA

Appearance:

1. Special Civil Application No. 7988 of 1998

MR PH PATHAK for Petitioner No. 1

MR JJ YAJNIK for Respondent No. 1-2

MR UM SHASTRI for Respondent No. 1

MR JC SHETH for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE KUNDAN SINGH

Date of decision: 08/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. The petition is directed against the order of the Tribunal, made on 8.1.98 in O.A. No. 207/93 and on 19.8.98 made in Revision Application No. 20/98, to the extent that he had been denied full backwages from 20.5.98 till his reinstatement.

#. The Tribunal, after taking note of the fact that the petitioner who was transferred to Bhavnagar Division vide memo dated 28.4.86, but had joined his duty only on December 19, 1991 having declared himself sick under a private medical certificate for the period from 1.5.86 to 19.5.88, and of the fact that he was paid backwages for the period from 1.5.86 to 19.5.86 as the said period was treated as leave due, came to a finding that it cannot be said that the petitioner had refused to work and that he was entitled to some lumpsum amount. The Tribunal observed that keeping in view the period involved and the pay drawn by him at the relevant time and providing for the possibility of some other earning during the period, it was appropriate that the applicant should be paid lumpsum of Rs. 20,000/- as backwages for the relevant period.

#. The authority had not paid any wages to the petitioner for the period from 20.5.86 to 3.12.91 on the principle of "No work No pay". It was not shown by the petitioner that he was not gainfully employed during the said period. The Tribunal, therefore, cannot be said to have exercised the discretion in awarding the lumpsum amount of backwages in a manner as no reasonable person would do. In para 6 of the Review Application, after having considered the decisions cited before it, the Tribunal observed that the petitioner had overstayed his leave from 1986 and that he was only a Casual Labourer and was not holding a civil post and therefore, there was no error in awarding the lumpsum amount of backwages to the petitioner.

#. We are of the opinion that the Tribunal has not committed any error in exercising its jurisdiction so as to warrant any interference by this Court. In the facts and circumstances of the Case, the lumpsum amount of backwages of Rs. 20,000/- was justified and the petitioner was not entitled to full backwages. The petition is therefore, rejected. Rule is discharged with no order as to costs.

[R.K. ABICHANDANI, J.]

[KUNDAN SINGH, J.]

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